SUPREME COURT OF THE UNITED STATES.

No. 268.

PETER HANGER, PLAINTIFF IN ERROR,

vs.

J. S. AND E. A. ABBOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to the judges of the circuit court of the United States for the district of Arkansas, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Peter Hanger and J. S. and E. A. Abbott, a manifest error hath happened, to the great damage of the said Peter Hanger, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday in December, 1866, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Salmon P. Chase, Chief Justice of
2 the said Supreme Court, the ninth day of May, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] Attest: CHAS. P. REDMOND,
Clerk U. S. Circuit Court, East. Dist., Ark.

This writ of error allowed May 9th, 1866.

HENRY C. CALDWELL,
District Judge.

The execution of this writ of error appears by the schedule hereunto annexed.

Attest: CHAS. P. REDMOND,
Clerk U. S. Circuit Court, East. Dist., Ark.

May 22d, 1866.

3

4 *Transcript of record.*

PETER HANGER, pl'ff in error,
vs.
J. S. and E. A. ABBOTT, def'ts in error.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that on the seventh day of February, A. D. 1865, Joseph S. Abbott and Edward A. Abbott, did file in the clerk's office of the circuit court of the United States for the eastern district

of Arkansas, their declaration against Peter Hanger, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

In the circuit court of the United States for the said district, to the April term thereof, A. D. 1865.

Joseph S. Abbott and Edward A. Abbott, merchants and partners under the firm name of "J. S. & E. A. Abbott," who are citizens of the State of New Hampshire, plaintiffs in this suit, by attorney complain of Peter Hanger, defendant herein, who is a citizen of the State of Arkansas, residing in the said district, of a plea of trespass
5 on the case upon promises.

For that the said defendant and one John T. Chidester, who is a citizen of the State of Alabama, and who is not sued, and one Charles Rapley, who was a citizen of the State of Arkansas, but who is now dead, and to whom no executor or administrator has been appointed and qualified, and who is also not sued, as late partners by their firm name and style of Chidester, Rapley & Co., at the city of Concord, in the State of New Hampshire, on the 1st day of January, A. D. 1865, and in the lifetime of the said Charles Rapley, were indebted to the said plaintiffs as partners aforesaid, in the sum of ten thousand dollars, lawful money of the United States of America, for divers goods, wares, and merchandise, before that time bargained and sold by the said plaintiffs to the said defendant, and the said Chidester and Rapley, as partners as aforesaid, and at their special instance and request; and in a like sum of ten thousand dollars, like lawful money, for so much money before that time loaned and advanced to, and paid, laid out, and expended for the said defendant and the said Chidester and Rapley, as partners as aforesaid, and at their like request, by the said plaintiffs; and in a like sum of ten thousand dollars, like lawful money, for the interest on divers sums of money before then owing and due. and unpaid by and from the said defendant and the said Chidester and Rapley, as part-
6 ners as aforesaid, to the said plaintiffs, and by the said plaintiffs for a long time theretofore forborne to be collected of and from the said defendant, and the said Chidester and Rapley, and at their like request; and in a like sum of ten thousand dollars, like lawful money, on an account *on an account* then and there stated, by and between the said plaintiffs and the said defendant and the said Chidester and Rapley, as partners as aforesaid. And being so indebted, the said defendant, in consideration of the premises, on the day and year aforesaid, promised the plaintiffs to pay them the said several sums of money on request; yet the said defendant, though often requested so to do, has not, nor have the said Chidester or Rapley, or either one of them, or any one whomsoever, paid the said sums of money, or any of them, or any part of any of them, but so to do the said defendant and the said other parties, have hitherto neglected and

refuse, and still do refuse, to the plaintiff's damage of ten thousand dollars.

W. M. RANDOLPH,
Attorney for Plaintiffs.

I, William M. Randolph, acknowledge myself security for all the costs for which the plaintiff may be liable in this suit.

W. M. RANDOLPH. [SEAL.]

January 31, 1865.

7 Filed and writ issued this 7th day of February, 1865.

ROBERT J. T. WHITE, *Clerk.*

And on this 7th day of February, 1865, the clerk of United States circuit court for eastern district of Arkansas, did issue to the marshal of said district, a writ of summons in this case, which writ is in the words and figures as following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to the marshal of the eastern district of Arkansas, greeting:

You are hereby commanded to summon Peter Hanger, if he be found within your bailiwick, to appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, at the court-house, in the city of Little Rock, on the first day of our next April term, 1865, to answer Joseph S. Abbott and Edward A. Abbott, merchants and partners, under the firm name of J. S. & E. A. Abbott, of a plea of trespass on the case upon promises to the plaintiff's damage of ten thousand dollars, and have you then and there this writ.

In testimony whereof, the honorable Salmon P. Chase, Chief Justice of the Supreme Court, has caused the seal of the said circuit court to be hereunto affixed, this seventh day of Febuary, A. D. 1865, and the eighty-ninth year of our independence.

[SEAL.] Attest: ROBERT J. T. WHITE, *Clerk.*

8 And upon which writ the marshal as aforesaid makes the following return, which return is in the words and figures as follows, to wit:

The return of the marshal on the writ of summons is lost and cannot be found, after diligent search—lost by attorneys.

CHAS. P. REDMOND, *Clerk.*

UNITED STATES OF AMERICA, *Eastern District of Arkansas:*

Be it remembered that at a stated term of the circuit court of the United States of America for the eastern district of Arkansas, begun and holden at the United States court-room, in the city of Little

Rock, Ark., on the 10th day of April, A. D. 1865, the following further proceedings were had, to wit:

J. S. and E. A. ABBOTT, pl'tiffs,
vs.
PETER HANGER, def't.

And now comes Peter Hanger by his attorney, S. F. Clark, and files herein his two pleas of the general issue and the statute of limitations, which pleas are in the words and figures as following, to wit:

In the circuit court of the United States for the eastern district
9 of Arkansas, at the April term thereof, A. D. 1865.

PETER HANGER, defendant,
ats.
JOSEPH S. ABBOTT and EDWARD A. ABBOTT, plaintiffs.
} Trespass on the case on promises.

And the said defendant, Peter Hanger, comes and defends the wrong and injury which, &c., and for plea to said plaintiffs' declaration, whereof he hath above complained against him says, actio non, because he says that he, this defendant, did not undertake and promise in manner and form as the said plaintiffs have thereof in said declaration complained against him, and of this he puts himself upon the country, &c.

And for a further plea in this behalf, by leave, &c., the said defendant says, actio non, because he says that the said plaintiffs' cause of action in his said declaration above mentioned did not accrue at any time within three years previous to the commencement of this suit, and this he is ready to verify when, &c.

Wherefore he prays judgment whether the said plaintiff ought to have or maintain his aforesaid action, thereof against him, &c.

S. F. CLARK, *Attorney.*

Filed April 10, 1865.

CHAS. P. REDMOND, *Clerk.*

And on the 14th day of April, A. D. 1865, it being yet of the April term, 1865, the following further proceedings were had, to wit:

10 J. S. ABBOTT and E. A. ABBOTT
vs.
PETER HANGER.

And now comes the said plaintiff by John Wassall, their attorney, and files herein their similiter to the first plea, and 7 replications to second plea, which similiter and replications are in the words and figures following, to wit:

In the circuit court of the United States for the eastern district of Arkansas, April term, 1865.

JOSEPH S. ABBOTT and EDWARD A. ABBOTT, partners, &c., plaintiffs,
vs.
PETER HANGER, defendant.
} Assumpsit.

And the said plaintiffs by attorney come, and as to the said plea of

the said defendants by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

JOHN WASSALL,
Attorney for Pl'ffs.

1. And the said plaintiffs, as to the said plea of the said defendant by him secondly above pleaded say, precludi non, &c., because they say that the said several causes of action in their said declaration mentioned, and each and every of them did accrue to the said plaintiff within three years next before the commencement of this
11 suit, in manner and form as the said plaintiffs have above complained against the said defendant, to wit: at the district aforesaid, and this the said plaintiffs pray may be inquired of by the country, &c.

JOHN WASSALL.
Attorney for Pl'ffs.

2. And for a second and further replication in the said behalf, by the leave of the court first had and obtained, the said plaintiffs say, precludi non, &c., because they say that the said several causes of action and each of them accrued to the said plaintiffs on and after the 22 day of June, A. D. 1859, and before the 23d day of October, A. D. 1859, and that after the said several causes of action had accrued, to wit: on the 5th day of May, A. D. 1861, the said plaintiffs and each of them were imprisoned beyond the limits of the State of Arkansas, and that they continued so imprisoned from thence up to and until within twelve months next before the commencement of this suit, and so the said plaintiffs in fact say that they did commence this suit within three years next after the said several causes of action, and each of them, accrued, and this they are ready to verify; wherefore, &c. (Gould's Dig., ch. 106, § 16.)

JOHN WASSALL,
Attorney for Pl'ffs.

3. And for a third and further replication in this behalf, by
12 the leave of the court first had and obtained, the said plaintiffs say, precludi non, &c., because they say that the said several causes of action, and each of them accrued as in the last preceding replication it is stated, and that after the same had so accrued, to wit: from the 6th day of May, A. D. 1861, up to and until within twelve months next before the commencement of this suit, the said defendant so concealed himself that no action for the said causes could be commenced against him, and so the said plaintiffs in fact say that they did commence this suit within three years next after the said several causes of action, and each of them, accrued, and this they are ready to verify, whereof, &c. (Gould's Dig., chap. 106, § 32.)

JOHN WASSALL,
Attorney for Pl'ffs.

4. And for a fourth and further replication in the said behalf by the leave of the court first had and obtained, the said plaintiffs say,

precludi non, &c., because they say that the said several causes of action accrued, as in the second replication preceding is stated, and that after the same had so accrued, to wit: from the 6th day of May, A. D. 1861, up to and until within twelve months next before
13 the commencement of this suit, the said defendant, by his own improper conduct, that is to say, by voluntarily remaining within that part of the State of Arkansas which was in the power and under the control of the insurgents against the government of the United States, and where they had subverted all law and shut up all the lawful courts, did prevent the commencement of any action for the said several causes; and so the said plaintiffs in fact say that they did commence this suit within three years next after the said several causes of action accrued, and this they are ready to verify, &c. (Gould's Dig., sec. 32, ch. 106.)

JOHN WASSELL,
Attorney for Pl'ffs.

5. And for a fifth and further replication in the said behalf, the said plaintiffs by the leave of the court first had and obtained, say, precludi non, &c., because they say that the said several causes of action, and each of them accrued as in the second preceding replication is stated, and that after the same had so accrued, to wit: from the 6th day of May, A. D, 1861, up to and until the first day of January, A. D. 1865, the said defendant was an actual resident of the State of Arkansas, and the said plaintiffs were actual residents of the State of New Hampshire, and that during the whole of the said time the said plaintiffs were prevented by reason of resistance to the execution of the laws of the United States, and the interrup-
14 tion of the ordinary course of judicial proceedings in the said State of Arkansas, from instituting their action for the said several causes aforesaid, and from having the said defendant served with proper process for the commencement of such action, and so the said plaintiffs say that they did commence this suit within three years next after the said several causes of action and each of them accrued, and this they are ready to verify, wherefore, &c. (Act of Congress, June 19, 1864.)

JOHN WASSALL,
Attorney for Pl'ffs.

6. And for a sixth and further replication in the said behalf, the said plaintiffs, by the leave of the court first had and obtained, say, precludi non, &c., because they say that for more than ten years last past they have continuously been citizens and actual residents of the State of New Hampshire, and the said defendant, during the whole of that said time has been a citizen and actual resident of the State of Arkansas; that the said several causes of action in the said declaration mentioned accrued to the said plaintiffs against the said defendant on and after the 22 day of June, A. D. 1859, and before the 25 day of October, A. D. 1859; that after the same had so accrued, to wit, on the 6 day of May, A. D. 1861, all the lawful courts
15 of the State of Arkansas, and all the lawful courts of the

United States in the State of Arkansas, by reason of the insurrection and rebellion which then arose against the lawful authority and government of the United States, were shut up and closed to all legitimate business, and that the said courts so remained shut up and closed to all such business from thence for a long space of time, to wit, up to and until the 1st day of January, A. D. 1865; and so the said plaintiffs say that the said space of time, from the 6th day of May, A. D. 1861, to the 1st day of January, A. D. 1865, should not be deemed or taken as any part of the time limited by the law for the commencement by them of their action or actions for the said several causes, and in fact that they did commence this suit within three years next after the said several causes of action, and each of them, accrued, and all this they are ready to verify; wherefore, &c.

(Angell on Limitations, sec. 488.)

JOHN WASSALL,
Attorney for Pl'ffs.

7. And the said plaintiffs for a seventh and further replication in the said behalf, by the leave of the court first had and obtained, say, precludi non, &c., because they say that the said defendant, heretofore, to wit, on the 29th day of December, A. D. 1860, to wit, at the city of Little Rock, in the said district, agreed and promised in writing to pay to the said plaintiffs the said several sums of
16 money mentioned in their said declaration, and which were so due from him to the said plaintiffs, as in their said declaration is specified, and this they are ready to verify; wherefore, &c. (Brown *vs.* State Bank, 5 Eng. Rep., 134; Conway *vs.* Rayburn, 22 Ark. Rep., 290.)

JOHN WASSALL,
Attorney for Plaintiffs.

Filed April 14th, 1865.

CHARLES P. REDMOND, *Clerk.*

And on the 20th day of April, 1865, it being yet of the April term, A. D. 1865, the following further proceedings were had, to wit:

J. S. and E. A. ABBOTT
vs.
PETER HANGER.

And now comes Peter Hanger, by S. F. Clark, esq., his attorney, and files herein his similiter to plaintiffs' first replication to defendant's second plea, and his demurrer to plaintiffs' 2d, 3d, 4th, 5th, 6th, and 7th replications.

And which similiter and demurrer of defendant is in the words and figures following, to wit:

In the circuit court of the United States for the eastern district of Arkansas at the April term, 1865.

17 PETER HANGER, defendant,
ats.
JOSEPH S. ABBOTT and EDWARD A. ABBOTT, partners, &c., plaintiffs. } Assumpsit.

And the said defendant as to the said first replication of the said plaintiffs to the second plea of the said defendant, and which the said plaintiffs have prayed may be inquired of by the country, doth the like.

S. F. CLARK, *Attorney.*

To 2d replication: And the said defendant saith that the said second replication of the said plaintiffs to the said second plea of the said defendant, and the matters therein contained in manner and form, &c., are not sufficient in law for the said plaintiffs to have and maintain their aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same, and this the said defendant is ready to verify; wherefore the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

S. F. CLARK, *Attorney.*

To 3d replication: And the said defendant saith that the 3d replication of the said plaintiffs to the said second plea of the said de-
18 fendants and the matters therein contained, in manner and form, &c., are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound in law to answer the same, and this the said defendant is ready to verify; wherefore the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

S. F. CLARK, *Attorney.*

To 4th replication: And the said defendant saith that the fourth replication of the said plaintiff to the said second plea of the said defendant, and the matters therein contained, in manner and form, &c., are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant. And that he, the said defendant, is not bound by law to answer the same, and this the said defendant is ready to verify; wherefore he prays judgment, &c.

S. F. CLARK, *Attorney.*

To 5th replication: And the said defendant saith, that the fifth replication of the said plaintiffs to the second plea of the said defendant, and the matters therein contained, in manner and form, &c., are not sufficient in law for the said plaintiffs to have or maintain

19 their aforesaid action thereof against him, the said defendant, and that he is not bound by law to answer the same, and this the said defendant is ready to verify; wherefore he prays judgment, &c.

S. F. CLARK, *Attorney.*

To 6th replication: And the said defendant saith, that the sixth replication of the said plaintiff to the second plea of the said defendant, and the matters therein contained, in matter and form, &c., are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and that the said defendant is not bound by law to answer the same, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

S. F. CLARK, *Attorney.*

To 7th replication: And the said defendant saith that the seventh replication of the said plaintiffs to the second plea of the said defendant, and the matters and things therein contained, in manner and form, &c., are not sufficient in law for the said plaintiffs to
20 have or maintain their aforesaid action thereof against him, the said defendant, and that he, the said defendant, is not bound by law to answer the same; and this the said defendant is ready to verify.

Wherefore the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

S. F. CLARK,
Attorney for Def't.

Filed April 20, 1865.

CHARLES P. REDMOND, *Clerk.*

And on the first day of May, A. D. 1865, it being yet of the April term, 1865, the following further proceedings were had, to wit:

J. S. and E. A. ABBOTT
vs.
PETER HANGER. } Ass't.

And now comes the parties herein, by their respective attorneys, and the demurrer to second, third, fourth, fifth, sixth, and seventh replications heretofore filed herein is argued and submitted to the court.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a stated term of the circuit court of the United States of America for the eastern district of Arkansas,
21 begun and holden at the United States court-rooms in the city

of Little Rock, Arkansas, on the ninth day of April, A. D. 1866, the following proceedings were had, to wit:

J. S. and E. A. ABBOTT
vs.
PETER HANGER. } Ass't.

This cause having been heretofore submitted to the court on demurrer, the court now here finds, and considers that the demurrer to plaintiffs' second, third, fourth, and seventh replications be sustained, and that the demurrer to the fifth and sixth replications be overruled.

And on the fourth day of May, A. D. 1866, it being yet of the April term, 1866, the following further proceedings were had, to wit:

J. S. and E. A. ABBOTT
vs.
PETER HANGER.

And now comes the plaintiffs, by John Wassell, esq., their attorney, and comes also the defendant, by S. F. Clark, esq., his attorney, and the parties, by their respective attorneys, make and file herein their written consent that the issues of fact in this cause may be tried by the court, sitting as a jury; and both parties announcing themselves ready for trial, the court proceeds to hear the evidence adduced as well on the part of the plaintiff as of defendants,
22 and not being now sufficiently advised in the premises, takes time to consider of its judgment herein.

And afterwards, on the same day, the said defendant, by S. F. Clark, esq., his attorney, comes and tenders to the court his bill of exceptions, which is examined, signed, and sealed by the judge, and ordered to be made a part of the record in this cause.

And which written consent of attorneys is in the words and figures as following, to wit:

In the circuit court of the United States for the eastern district of Arkansas.—April term, 1866.

J. S. and E. A. ABBOTT
vs.
PETER HANGER.

Comes J. S. and E. A. Abbott, by John Wassall, their attorney, and the defendant, Peter Hanger, by his attorney, S. F. Clark, and agree that the honorable the judge of this court may try and dispose of this case.

JOHN WASSALL,
Att'y for Plaintiffs.
S. F. CLARK,
Attorney for Defendant.

Filed May 4th, 1866.

CHA'S P. REDMOND, *Clerk.*

And which bill of exceptions filed by the defendant's at-
23 torney is in the words and figures following, to wit:

In the circuit court of the United States for the eastern district of Arkansas, at the April term thereof, 1866.

J. S. and E. A. ABBOTT
vs.
PETER HANGER.

Be it remembered, that at the last previous term of this court this cause was submitted to the court upon the defendant's demurrers to the 2d, 3d, 4th, 5th, 6th, and 7th replications of the plaintiffs to said defendant's plea of the statute of limitations and joinders to said demurrers, and was, after argument of counsel, taken under advisement by the court.

And be it further remembered, that upon the first day of this present term, to wit, on the 9th day of April, A. D. 1866, the court being sufficiently advised in the premises, did, on that day render his decision in the premises, and did sustain the said demurrers to said 2d, 3d, 4th, and 7th replications, and did overrule the said demurrer to said 5th and 6th replications, to said plea of statute of limitations, and did decide that said 5th and 6th replications were good and sufficient in law to bar the said defence of the statute of limitations as pleaded by the said defendant, to which said decision of the
court, in overruling the said demurrers to said 5th and 6th
24 replications, the said defendant excepted at the time such decision was made, and time was given the defendant to prepare his bill of exceptions.

And now, on this day, the said defendant, in order to save the benefit of his said exceptions in that behalf, tenders this his bill of exceptions to the court, wherein he excepts to the opinion and decisions of the court in so overruling the said demurrer to said 5th and 6th replications as irregular and erroneous in law, and prays that the same may be signed and sealed by the court here and made a part of the record in this cause, which is done accordingly this 4th day of May, being yet of the April term, 1866.

[SEAL.] HENRY C. CALDWELL,
District Judge.

Filed May 4th, 1866.

CHARLES P. REDMOND, *Clerk.*

And on the 5th day of May, A. D. 1866, it being yet of the April term, 1866, the following further proceedings were had, to wit:

J. S. and E. A. ABBOTT
vs.
PETER HANGER.

This cause having been heretofore submitted to the court on the
issues of fact involved, the court being now sufficiently advised
25 in the premises, and what judgment to render herein, it is considered, ordered, and adjudged that the said plaintiffs,

Joseph S. Abbott and Edward A. Abbott, partners as aforesaid, do have and recover of and from the said defendant, Peter Hanger, the sum of nine thousand four hundred and eighty-three dollars and twenty-six cents, for their damages, together with all their costs in and about this suit expended.

And on the ninth day of May, A. D. 1866, it being yet of the April term, 1866, the said defendant, by his attorney, filed in court his bond upon writ of error, which bond is in the words and figures as following, to wit:

Supreme Court of the United States.

Know all men by these presents that we, Peter Hanger and E. L. Slaughter, James L. Hodges and William Brown, jr., are held and firmly bound unto J. S. and E. A. Abbott in the sum of twelve thousand dollars, to be paid to the said J. S. and E. A. Abbott, their executors or administrators. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and admistrators firmly by these presents.

Sealed with our seals, and dated this 4th day of May, A. D. 1866.

26 Whereas the above-named Peter Hanger, hath presented a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by the circuit court of the United States for the eastern district of Arkansas, in the case of said J. S. and E. A. Abbott against said Peter Hanger.

Now therefore, the condition of this obligation is such, that if the above-named Peter Hanger shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his said plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

PETER HANGER. [SEAL.]
E. L. SLAUGHTER. [SEAL.]
JAMES L. HODGES. [SEAL.]
WILLIAM BROWN, JR. [SEAL.]

Sealed and delivered in presence of—
S. F. CLARK.

The above and foregoing bond examined and approved, the plt'ffs att'ys, John Wassall, admitting the sufficiency of the security and consenting to said approval.

HENRY C. CALDWELL,
District Judge.

May 9, 1866.

Filed this 9th day of May, 1866.
CHARLES P. REDMOND, *Clerk.*

I agree that the bond of Peter Hanger, in the case of himself *vs.* Abbott & Co., in writ of error to the Supreme Court, may be

27 considered as sufficient with the following names as securities: E. L. Slaughter, James L. Hodges, and William Brown, jr.

JOHN WASSAL,
Att'y for Abbott & Co.

May 9, 1866.

And on the ninth day of May, A. D. 1866, the honorable Henry C. Caldwell, district judge for said district, did issue a citation to plaintiffs, which citation is in the words and figures as following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Arkansas, wherein Peter Hanger is plaintiff and you are defendant in error, to show cause if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry C. Caldwell, district judge for the district of Arkansas, this ninth day of May, A. D. 1866, and of our independence the ninetieth.

HENRY C. CALDWELL,
District Judge for the District of Arkansas.

28 And upon which writ, the marshal makes return, which return is in the words and figures as following, to wit:

I have executed the within citation, this 9th day of May, A. D. 1866, by then and there delivering a copy thereof to John Wassall, esq., attorney for J. S. and E. A. Abbott, and by then and there reading the same to him in his hearing: this at Little Rock, Arkansas.

May 10, 1866.

W. O. STODDARD,
U. S. M. for East'n Dist. of Arkansas.
By C. H. COLE, *Dep. M.*

Filed May 11th, 1866.

CHAS. P. REDMOND, *Clerk.*

Taxation of costs as follows:

Clerk's costs	$24 50
Marshal's costs	6 90
Attorney's costs	12 50
Total costs	43 90

Attest: CHAS. P. REDMOND, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas, ss:

I, Charles P. Redmond, clerk of the circuit court of the United States in and for the eastern district of Arkansas, do hereby
29 certify that the foregoing pages, 25 in number, contain a full, true and complete transcript of the record, proceedings, and papers on file in the case of J. S. and E. A. Abbott *versus* Peter Hanger, now of record in my office.

In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of said court, this 22d day of May, A. D. 1866, and the ninetieth year of our independence.

[SEAL.] Attest: CHAS. P. REDMOND, *Clerk.*

O

Supreme Court of the United States.

DECEMBER TERM, 1867.

HANGER
vs.
ABBOTT. } No. 110.

The case is before the Court upon a writ of error, to reverse the judgment of the Court below, overruling the defendant's (who is the plaintiff in error) demurrer to the fifth and sixth replications to his second plea of the statute of limitations of Arkansas.

That statute is a bar to the plaintiff's right of recovery, unless the existence of the late civil war prevented its operation. It will be contended, on the part of the plaintiff in error, that it did not so operate. And in support of this view, reliance will be placed upon the cases of the Bank of Alabama *vs.* Dalton, 9 How. 522, and upon Angel on Lim. 23, and the cases there cited. The act of Congress of the 11th of June, 1864, (13 Stat. at Large, 123) does not apply; 1st, because it was not intended to apply to such a case as the present; and 2d, because, if so intended, it is void for want of authority, Congress having no power to control the statutes of limitations of the States.

REVERDY JOHNSON,
For Plaintiff in Error.

IN THE SUPREME COURT
OF THE
UNITED STATES.

PETER HANGER,
Plaintiff in Error,

vs.

J. S. & E. A. ABBOT,
Defendants in Error.

BRIEF FOR DEFENDANTS.

SAMUEL C. EASTMAN,
Of Counsel for Defendants in Error.

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IN THE SUPREME COURT

OF THE

United States.

PETER HANGER,

Plaintiff in Error,

vs.

J. S. & E. A. ABBOT,

Defendants in Error.

Statement of the Case.

This was an action brought in the Circuit Court of the United States, for the Eastern District of Arkansas, by J. S. & E. A. Abbot, Merchants, citizens of New Hampshire, against Peter Hanger, of Arkansas. The declaration is assumpsit, and the pleas, the general issue and the Statute of Limitations, (page 4 of printed record.) To the second plea the plaintiffs filed several replications, of which only the fifth and sixth are material, which are as follows:

5.—And for a fifth and further replication in the said behalf, the said plaintiffs, by the leave of the Court first had and obtained, say, *precludi non*, &c., because they say that the said several causes of action, and each of them, accrued as in the

second preceding replication is stated [on and after the 22d day of June, A. D. 1859, and before the 23d day of October, A. D. 1859], and that after the same had so accrued, to wit: from the 6th day of May, A. D. 1861, up to and until the first day of January, A. D. 1865, the said defendant was an actual resident of the State of Arkansas, and the said plaintiffs were actual residents of the State of New Hampshire, and that during the whole of the said time the said plaintiffs were prevented by reason of resistance to the execution of the laws of the United States, and the interruption of the ordinary course of judicial proceedings in the said State of Arkansas, from instituting their action for the said several causes aforesaid, and from having the said defendant served with proper process for the commencement of such action, and so the said plaintiffs say that they did commence this suit within three years next after the said several causes of action and each of them accrued, and this they are ready to verify, wherefore, &c. (Act of Congress, June 11, 1864.)

6.—And for a sixth and further replication in the said behalf, the said plaintiffs, by the leave of the Court first had and obtained, say, *precludi non*, &c., because they say that for more than ten years last past they have continuously been citizens and actual residents of the State of New Hampshire, and the said defendant, during the whole of that said time has been a citizen and actual resident of the State of Arkansas; that the said several causes of action in the said declaration mentioned accrued to the said plaintiffs against said defendant on and after the 22d day of June, A. D. 1859, and before the 25th day of October, A. D. 1859; that after the same had so accrued, to wit, on the 6th day of May, A. D. 1861, all the lawful courts of the State of Arkansas, and all the lawful courts of the United States in the State of Arkansas, by reason of the insurrection and rebellion which then arose against the lawful authority and government of the United States, were shut up and closed to all legitimate business, and that the said courts so remained shut up and closed to all such business from thence for a long space of time, to wit, up to and until the 1st day of January, A. D. 1865;

and so the said plaintiffs say that the said space of time, from the 6th day of May, A. D. 1861, to the 1st day of January, A. D. 1865, should not be deemed or taken as any part of the time limited by the law for the commencement by them of their action or actions for the said several causes, and in fact that they did commence this suit within three years next after the several causes of action, and each of them, accrued, and all this they are ready to verify; wherefore, &c. (Angell on Limitations, sec. 488.)

The defendant demurred generally, and the Court overruled the demurrer and the defendant excepted to the ruling of the Court.

The only question presented by the case is, whether the time during which the courts were closed on account of the rebellion, is to be excluded from the computation of the time fixed by the Statute of Limitations within which suits on contracts may be brought. It is not one of the exceptions provided for by the Statute of Limitations enacted by the State of Arkansas. We contend, however, that the exception is made by the common law, and also by the act of Congress, chap. cxviii., approved June 11, 1864.

Points.

I. The closing of the courts by a rebellion or civil war suspends the operation of the Statute of Limitations.

II. 1. Between citizens of two States at war, all debts are suspended and also the Statute of Limitations.

2. The late rebellion having been declared to be a civil war, and to give belligerent rights to the parties, carries with it all the incidents thereto and suspends the Statute of Limitations between citizens of two of our States, one in rebellion and one not.

III. The act of Congress, chap. cxviii., approved June 11, 1864, is sufficient to take the case out of the operation of the Statute of Limitation.

I.

The closing of the courts by a rebellion or civil war suspends the operation of the Statute of Limitations.

The Legislatures of the States of the United States have generally adopted the English Statutes of Limitations, with some variation as to the time. All of these statutes provide that certain disabilities, like infancy, or insanity, or the absence of the defendant from the jurisdiction, shall constitute exceptions to the general rule and prevent the running of the statute. The case of the failure of justice by the suspension of the courts is not among these exceptions in any of the statutes. The statute is designed to put an end to the prosecution of stale claims and relieve the individual from the necessity of defending himself against a claim, the evidence of whose payment he may have lost, and the community from annoyance and expense when the claimant is at fault for his negligence. It is based on the theory, too, that the debts have been paid or they would not have been allowed to slumber so long and so quietly. Laches and fraud constitute the foundation of the law. The exceptions are those where no such presumption can exist, or where it is rebutted by the peculiar circumstances of the case. An infant is not presumed to know his rights until his majority, while the creditor, without fault or negligence of his own, cannot, if he would, proceed against an absent debtor.

The case of "a domestic war, where the courts of justice are shut," is not within the terms of the exception. It is however manifest that in such a case no action could be brought, and as Coke says, the claimant "would be without all remedy," and that too without any presumption against him and with the idea of negligence on his part plainly rebutted by the facts. If then it does not come within the letter of the exception, it comes within the spirit and equity of it. The omission to commence the

suit is not the fault of the individual subject, but of the government that has failed to provide a court wherein the prescribed remedy may be obtained.

The early statutes made no mention of the case where the defendant is out of the realm. The courts, it is true, refused to extend the exception to this case, though its equity was urged. They replied, however, that the claimant might commence proceedings by outlawry, which would enable him to preserve his right to sue. They decided, indeed, that it was for the legislative power to extend the exceptions, but they also assigned as a reason that the disability complained of was not an insuperable one and so not strictly within the equity.

In the case before us, however, no amount of diligence would have enabled the claimant to preserve his right to sue. The legislature, too, could not have been expected to provide for the contingency. It is argued that the absence of the defendant is a very supposable case, which they could easily have provided for. But no government would act for a moment on the theory of its own extinction or of its inability to protect its own existence. They could not admit by a statute law any such possibility. It would, moreover, be a waste of time to provide for a state of things which presupposes at least a temporary suspension of all the laws they could enact, and renders more than doubtful what would come after. The law-making power could not provide for the case. It must be regarded as an unavoidable casualty which shall not be allowed to inflict unnecessary damage or interpose any factitious barriers to the administration of justice.

The extension of the statute by the courts by construction is not without precedent. The early statute of James, on which the decisions, both for and against the extension by construction were founded, was, "unfortunately, worded very loosely." (*Inglis* v. *Haigh*, 8 Mees. & Welsb. 779.) The action of assumpsit was not included in the list of actions to which the statute applied, though the omission was "palpably unintentional," (*Piggott* v. *Rush*, 4 Adol. & Ell. 912.) In spite of this omission the courts held that the case came within the equi-

ty or reason of the law and should be subjected to the limitations. They decided that it was fairly included in trespass on the case. *Caseir* v. *Tomlinson*, 2 Mod. 71; *Piggott* v. *Rush*, 2 Adol. & Ell. 912. See also *William* v. *Williams*, 5 Ohio, 444. In like manner the Court has decided that "beyond the seas" meant simply "out of the State." 3 Wheaton, 541.

In *Richards* v. *Maryland Ins. Co.*, 8 Cranch, 84, the Court considered at some length the reasons which justify a departure from the strict letter of the law. In that case the statute was not suspended for the reason that the representatives of a deceased plaintiff in a previous case might have come into Court and continued the case. They say, however, "The object of the law is to secure the individual from the machinations of dishonesty, when attempted under the advantages attendant upon the lapse of time, loss of papers, and death of witnesses. But when cases present themselves in which no laches can be imputed to the plaintiffs, but great injustice would be done by applying to such cases the effect of the statute, the conclusion of reason and the law is, that such cases were not in the mind of the legislature when enacting that law. Such are the cases of a want of parties, plaintiff or defendant, whereby a temporary suspension of legal remedy takes place." The closing of the Courts, by the inability of the government to keep them open, is a still stronger case of the "suspension of legal remedy" than any absence of the parties, and entirely rebuts all presumption of laches.

The position that the statute is suspended by the closing of the courts on account of civil war, has moreover received the sanction of this Court. *McIver* v. *Ragan*, 2 Wheat. 25, was ejectment for land in Tennessee. The defendants claimed under a junior title and seven years possession, which by the statutes constitutes a bar. The land being partly in the Indian territory, where it was forbidden to make surveys, and not being ceded to the United States till within seven years of the bringing of the suit, the plaintiffs urged that they ought not to be bound by the statutes. In arguing the case in the Supreme Court, the counsel for the plaintiffs admitted that it did not come

within the exceptions of the law, but argued that it came within the equity, like the case of the courts being closed on account of civil war. Chief Justice Marshall delivered the opinion of the Court. He says: "It is admitted that the case of the plaintiff is not within these, [the exceptions to the statutes,] but is contended to be within the same equity with those which have been taken out of the statutes; *as when the courts of a country are closed so that no suits can be instituted.*"

He thus gives his approval to our view of the law, though the point was not before the Court for decision. In that case the decision is adverse to the plaintiff. It does not come within the reason of the rules laid down in *Richards* v. *Maryland Ins. Co.*, just cited, as "the difficulties under which the plaintiff labored respected the trial, not the institution of the suit. There was no obstruction to the bringing of this ejectment at an earlier day. If, at the trial, a survey had been found indispensable to the justice of the case, the sound discretion of the Court would have been exercised on a motion for a continuance."

The older writers on English common law approve of this general principle. Plowden, (Rep. 9,) says that "there are three kinds of laws," "*viz.*, the Law General, Customs, and Statute Law, and in these three laws, such unavoidable accidents shall not hurt any one." He adds that killing is prohibited by the common law, and yet it is justifiable in case of necessity; by the common custom, hosts are liable for the goods of their guests, and yet are relieved if they are taken by the King's enemies. He adds, "Like reasons will dispense with Statute Law," and cites a case and closes with the general principle: "And so we see that some cases shall be construed contrary to statutes, contrary to customs, and contrary to the ordinary course of common law, and this is for the necessity of the matter, and therefore reason maintains that such persons as do so shall not be wrong-doers."

So, also, Sir Edward Coke says: "That in times of domestic war, when the courts of justice are shut, a descent shall not take away an entry, though the disseisin was in times of peace; for, if it did, the disseisee would be without all remedy,

there being no courts open for him to bring his action in." Coke, Lit. 249 b. sec. 412.

The precedents established by the English cases, where the question was raised as to the effect of the civil wars, which resulted in the death of Charles I. and the restoration of Charles II., are apparently against this view of the law. There is, however, a wide difference between the case of a civil war, in which the inhabitants of the same country found themselves arrayed on different sides, and which raged over nearly all parts of the kingdom, and a war which, though technically a civil war, was one in which the line of separation was as distinct and well defined as in the case of a war between two separate and individual nations.

The first and leading case in which the effect of a civil war is raised, is that of *Prideaux* v. *Webber*, 1 Lev. 31. This was trespass for assault, battery and imprisonment, May 1, 1657. The defendant pleads that the acts "were done 29th October, 1655, and pleads the Statute of Limitations. The plaintiff replied that certain rebels (not naming any) had usurped the government, and none of the King's courts were open. The defendant rejoins and confesses the usurpation; and further pleads the act of pardon of all things and acts of hostility done under the usurped authorities; and further pleads the act for confirming all judicial proceedings in the late times; and further pleads a warrant to imprison him." The plaintiff demurred. It was argued for the plaintiff "that the Statute of Limitations is not pleadable, because there being a stop of justice and no legal court held, none was bound to prosecute, especially for such an imprisonment as here in those times." "But afterwards, in Hillary Term, it was adjudged for the defendant, and that the Statute of Limitations was a bar." "And the reason they gave that the Statute of Limitations was a good bar, (be it so, as it was pleaded, that the courts were not open,) was because there is not any exception in the act of such a case; and infants had been bound (thereby) if they had not been excepted."

It should be specially noted that the acts complained of took place in the time of the Commonwealth, when, says Campbell,

3 Lives of the Lord Chancellors, 98, "the Common Law bench was exceedingly well filled," "and the law was well administered through them." The proceedings of these courts were universally recognized and approved, as instituted by the supreme authority of the nation for the time being. It is pleaded that "none of the *King's* courts were open," which technically might have been true. But it was not true that at that time the regular courts of justice were not open to all citizens of the realm. All persons had peaceful access to the courts, and all civil actions could have been successfully prosecuted. The action, moreover, was for an imprisonment, which was justified by a warrant. It is quite apparent that just at that period, when Charles II. had been restored by a whirlwind of loyalty, it was easier for the court to ground their decision on the statute than to take the real substantial position that the courts were open.

The next case is to be found in the report of *Lee* v. *Rogers*, 1 Lev. 110. The point is not raised in *Lee* v. *Rogers*, but in the report of the case the reporter says: "And in Hillary Term, the 15th of Car. 2, in the Common Pleas, between Sir *George Bremion* and Sir *John Evelyn*, on a promise made in 1646, the defendant pleaded the Statute of Limitations, to which the plaintiff replied, that the defendant was a member of the House of Commons till 1648, and that then the government was usurped, and no courts erect; and that he brought his action as soon as the courts were erected by the King's restoration. And on demurrer "it was adjudged (as I heard)," "That privilege of Parliament, nor the courts not being open, are not excuse against the Statute of Limitations, not being excepted out of the statute; and a man might here file an original against a member of Parliament without breach of privilege, and continue it till his privilege be determined."

In this case, also, the only sense in which it can be said that no courts were open, is with the meaning that no King's courts were open, and that the authority of Charles II. was binding during the time of the Commonwealth. The authority of these cases seems to be of little value when applied to the circumstances of the late rebellion, when not only were the courts

closed, but the debts were confiscated in many cases by the authority of the Confederate States.

These two cases, reported by Levinz, appear in various forms, and are the foundation of all the cases that by implication decide the point. The first case is reported by Keble, 157, under the title of *Miller* v. *Prideaux*, where the decision is made to turn on the effect of the act of oblivion.

The question in regard to all matters of contract was not, as we have seen, a practical one, as the courts were open during the Commonwealth. Immediately after the next interregnum, on the establishment of William and Mary, Parliament enacted that the time of the interregnum should be excluded from the computation, and this act removed all occasion for the courts acting upon the question practically.

Other questions arose, however, where in cases when the legislative power might easily have been exercised, the courts were asked to legislate by construction. In giving their decisions on these points, the judges not unnaturally cited the extreme case as a guide, without very carefully considering the foundation of the then obsolete rule. So in *Hall* v. *Wybourne*, 2 Salk. 420, the court refused to extend the exception to the case where the defendant was beyond seas, and cited *Bynion's* case. The same case is also reported in Carth. 137. The same point was before the court in *Aubrey* v. *Fortescue*, 10 Mod. 205, and *Bynion's* case was quoted as before, with the addition that it was approved by Chief Justice Holt, but no decision is recorded. In *Beckford* v. *Wade*, 17 Vesey 92, the court cite these cases, all hinging on the case in Levinz, which is called sometimes *Bremion's* and sometimes *Bynion's* case.

In the *Bank of Alabama* v. *Dalton*, 9 How. 522, the court refuse to make an exception, ruling that the courts have no power to make one, and say, "It is the doctrine maintained in *Stowell* v. *Zouch*, found in Plowden's Reports, and not departed from by the English courts, even in cases of civil war, when the courts of justice were closed and no suit could be brought." This is the last reappearance of the cases in the time of Charles II. already cited.

The consideration of these cases leads us to the conclusion, that, as was established in *Stowell* v. *Zouch*, where the legislature has expressed a rule and declared the exceptions, it is presumed to have done so advisedly, and the courts will not make an exception of that, which the legislature might well be presumed to have had in mind. In most of the cases, as where it was refused to extend the exception to the case of the defendant being beyond the seas, where the right might have been saved by outlawry, the difficulty is not insufferable and they suggest a remedy. In others, as in the case last cited, it was manifestly the intention of the legislature that there should be none. In the leading cases, the issue was not brought before the Court in a manner in which they could act on that question alone, untrammelled by other considerations, and their authority is more than doubtful. The question having ceased to be a practical one, the subsequent citations, as illustrations, give it no new vigor. Even if it be considered to be sound English law, it was made under a state of facts widely differing from those under consideration, which demand different treatment and the decisions cannot be considered as authoritative.

Hence we conclude that the Statute of Limitations was framed to prevent the prosecution of stale claims, where there is laches on the part of the claimant. Where no laches can be presumed, the law declares certain exceptions. The courts have in some cases extended the law by construction to cases of the same equity, and in their refusal to extend the exceptions, they have decided that they were not within the equity and that there was laches, or else that it was a case that the legislature could have readily foreseen and did not intend to provide for. The spirit of the common law declares that no man shall be compelled to perform impossibilities and shall not be deprived of his rights if he does not. Our own Court lays down the rule that the exceptions are to be enlarged in cases of unavoidable necessity, and Chief Justice Marshall clearly approves of the principle, for which we contend, that the closing of the Courts by civil war suspends the statutes, which we deem to be sound law and good common sense.

II.

1. *Between citizens of two States at war all debts are suspended and also the Statute of Limitations.*

On this point, which is so universally admitted that it is perhaps almost unnecessary to cite authorities, Chancellor Kent says, (1 Com. 68,) speaking of the effect of a war, "Contracts existing prior to the war are not extinguished, but the remedy is only suspended, and this from the inability of an alien enemy to sue, or to sustain, in the language of the civilians, a *persona standi in judicio*." Again, (page 169,) "The peace does not affect private rights which had no relation to the war. Debts existing prior to the war, and injuries committed prior to the war, but which made no part of the reasons for undertaking it, remain entire, and the remedies are revived."

This principle has been invariably recognized and acted upon, not only in treaties of peace in modern times, but by the courts. In *Hood* v. *Allen*, 2 Dallas (Pa.) 102, the court say: "During a war all civil actions between enemies are suspended; debts are suspended also, but restored by the peace." In other words, as the power of the courts to enforce a contract will be withheld for motives of public policy, for the same reason all negotiations and commercial intercourse are forbidden, and the remedy suspended. The rights, however, are not extinguished, but revive when the reason of the suspension ceases, and the suspension creates no disability. See also *Foxcraft* v. *Galloway*, 2 Dallas 132; *Wall* v. *Robson*, 2 Nott & McCord 498; *Hopkirk* v. *Bell*, 3 Cranch. 458; *Higginson* v. *Air*, 1 Desaus. Eq. 427.

Nelson, J., in an opinion in *The Prize Cases*, 2 Black. 687, says: "The legal consequences resulting from a state of war between two countries, at this day, are well understood and will be found described in every approved work on the

subject of national law. The people of the two countries become immediately the enemies of each other; all intercourse, commercial or otherwise, between them unlawful—all contracts existing at the commencement of the war suspended."

This is the latest view of the effect of a war upon the relations of the parties thereto. It is moreover a recent decision of this Court in an important and carefully considered case, in the main features of which the whole Court concurred, there being a difference of opinion only as to the time when the war commenced. The statement here is that all contracts are "suspended." If the contracts are "suspended" merely, and not extinguished by the war, the effect must with all the greater reason be the same upon the remedies. The very meaning of the word in this connection is that the fulfilment of the contracts is forbidden by law and that the aid of the courts and the use of the remedy is refused as long as this state of things continues. The contracts are not extinguished, but revive, when the state of war is over.

For all purposes, except as otherwise provided by the Constitution, the States of the Union are foreign to each other. Especially is this true of all commercial relations, as bills of exchange between different States are held to be foreign bills of exchange.

2. *The late rebellion having been declared to be a civil war and to give belligerent rights to the parties, carries with it all the incidents thereto, and suspends the Statute of Limitations between citizens of two of our States, one in rebellion and the other not.*

That the late rebellion produced a civil war and gave belligerent rights, was decided in *The Prize Cases* already quoted, and has been so uniformly recognized by this Court as to render it unnecessary to more than state the position. As bearing on the position of the parties, we may be pardoned for one or two quotations. "'A civil war,' says Vattel, 'breaks the bonds of society and government, or at least suspends their force and effect; it produces in the nation two independent parties who consider each other as enemies and acknowledge no common judge.

These two parties, therefore, must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies.'" *Prize Cases*, 2 Black, 667. "All persons residing within this territory, whose property may be used to increase the revenues of the hostile power, are in this contest *liable to be treated as enemies*, though not as foreigners. Though they have cast off their allegiance and made war on their government, they are none the less enemies, because they are traitors." *Id.*, page 674.

In the dissenting opinion by Judge Nelson, who differed from the majority of the Court only as to the time when the state of war first legally existed, it is said: "In the case of a rebellion or resistance of a portion of the people of a country against the established government, there is no doubt, if in its progress and enlargement, the government thus sought to be overthrown sees fit, it may by a competent power recognize or declare the existence of a state of civil war, which will draw after it all the consequences and rights of war between the two contending parties, as in the case of a public war." *Id.*, page 688. "This act of Congress [June 11, 1861], we think, recognized a state of civil war between the government and the Confederate States and made it territorial. The act of Parliament of 1776, which converted the rebellion of the Colonies into a civil, territorial war, resembled in its leading features, the act to which we have referred." *Id.*, page 695.

Again, in regard to another case arising out of the war, *Mrs. Alexander's Cotton*, 2 Wall. 419, the Court say: "We must be governed by the principles of public law, so often announced from this bench, as applicable alike to civil and international wars, that all the people of each State or district in insurrection against the United States, must be regarded as enemies, until by action of the legislature or the executive, or otherwise, that relation is thoroughly and permanently changed."

The fact of the war is thus clearly established in this Court, as well as the fact that the state of war carries with it all the incidents thereto, and visits on all the citizens of the two sections the liabilities incident to belligerents. Commercial inter-

course, as required by public law, was suspended. The contest was not only legally, but, in fact, territorial, and marked by the most definite boundaries. The inhabitants of the rebel States were invariably treated as public enemies by the United States, and the loyal citizens of the United States were treated as enemies by the South. The existence of the state of war was as complete as if the two sections had never enjoyed the peaceful relations of component parts of one nation. How then can the inference be avoided that, with belligerent liabilities, and the enforced suspension of commercial intercourse, and the utter prohibition, on grounds of public policy, of all payment of debts between the two sections, all the other rights incident to this state of things followed, including the suspension of the Statute of Limitations, and the revival of all civil rights as soon as peace and the supremacy of the United States was reestablished, and the courts opened for their enforcement ?

III.

The Act of Congress, chap. cxviii., approved June 11, 1864, *is sufficient to take the case out of the operation of the Statute of Limitations.*

Statutes of Limitation relate only to the remedy. *Sturges* v. *Crowningshield*, 4 Wheat. 122; *Wright* v. *Oakley*, 5 Met. 400; *Ogden* v. *Saunders*, 12 Wheat. 348. Congress has full power to change the remedies and declare what the limitations shall be, though till this is done, the statutes of the States are adopted and form a rule of decision in the courts of the United States. *Sturges* v. *Crowningshield*, 4 Wheat. 122; *McClung* v. *Silliman*, 3 Pet. 270; *Jackson* v. *Lamphire*, 3 Pet. 280; Brightley's Dig. Tit. Practice, sec. 3, page 792.

It is universally conceded that neither the provision in the Constitution of the United States, preserving the inviolability of contracts, nor the provision against retroactive laws in the constitutions of some of the States, prohibit the passage of statutes of limitation applicable to contracts already in existence, provided a reasonable time be allowed after the passage of the act in which to bring a suit. In like manner the right of the legislative power to extend or contract the period of limitation, so far as causes of action in existence, but not barred, are concerned, is not denied. It is, however, maintained by some courts that there is a vested right in the defence, when a cause of action is once barred, and that it cannot be revived by a State law without impairing the obligation of a contract. It is believed that this position, except in those States where there is a constitutional provision against retrospective laws, as in New Hampshire, is unsound. Such certainly is the view of the Supreme Court of Massachusetts in *Wright* v. *Oakley*, 5 Met. 400, where Chief Justice Shaw says: "It cannot be said, in technical strictness, that a man has a vested right to plead the

Statute of Limitations, so that it could not be taken away by an express act of legislation." Such an act would probably be considered retrospective. But retrospective laws are not forbidden to the States. *Calder v. Bell*, 3 Dallas 386; 1 How. 315.

Congress is hampered by no constitutional limitation in this respect. It may pass laws impairing the obligation of contracts, and thus set aside statutes of limitation, even if there be a vested right, and it may pass retrospective laws. *Calder v. Bell*, just cited. Sedgwick on Stat. and Const. Law, 198; *Syracuse Bank v. Barker*, 16 Barb. 188; *Hepburn v. Cutts*, 7 Watts, 300; *Bangher v. Nelson*, 9 Gill. 299.

The time limited by the statutes of Arkansas for bringing a suit on simple contracts is three years. The contract which is the foundation of this suit, was made in 1859, and it was therefore barred by the Statute of Limitations of Arkansas in 1862, unless the statute was suspended by the war or by the Act of Congress of June 11, 1864, which is as follows:

"*Be it enacted, &c.*, That whenever, during the existence of the present rebellion, any action civil or criminal, shall accrue against any person, who by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings, cannot be served with process for the commencement of such action, or the arrest of such person, or whenever after such action, civil or criminal, shall have accrued, such person cannot by reason of such resistance to the laws, or such interruption of judicial proceedings, be arrested or served with process for the commencement of the action, the time during which such person shall so be beyond the reach of legal process, shall not be deemed nor taken as any part of the time limited by law, for the commencement of such action."

That this law is intended to operate on all causes of action not barred before its passage, and that it does so operate as to extend the statute, is so plain as to admit of no argument to the contrary. The law is merely the exercise of the right to regulate the remedy.

The only question that remains to be considered is how far it

revives a cause of action already barred by previously existing law. To have this effect it must unquestionably be considered to some extent as retroactive. It is true that courts will not in general construe a statute to be retroactive, unless it be plainly so intended by the legislature. It is also true that this is a remedial statute. It is designed to preserve rights and secure the enforcement of valid contracts, that might otherwise be without a remedy in consequence of a technical rule, whose application would be enforced by the fraudulent or, at least, illegal conduct of those in whose favor it operated. Remedial statutes are entitled to a liberal construction. In a case like this, where it is one of the duties of government to provide a remedy for every infraction of right, and when that remedy has failed solely from the temporary inability of the government to maintain its authority, it can hardly be urged that the court will seek to render a remedial statute inapplicable, but rather that by a liberal construction they will endow it with life and vigor to meet the ends for which it was designed.

In construing the act it is proper for the Court to look at other laws on the same subject, and also "to the public history of times in which it was passed." *Aldridge* v. *Williams*, 3 How. 1. From this history and from the other laws on the same subject, the intent of the legislative power may be determined, when, perhaps, without such aid, a different result would be arrived at. A very carefully considered case, on this view of the subject, bearing too on the question of retrospective laws, is that of *Rich* v. *Flanders*, 39 N. H. 304. The constitution of New Hampshire prohibits retrospective laws. A statute had been passed in 1857 making parties witnesses, with a proviso that it should not apply to existing suits. In 1858 the proviso was repealed. The law now was precisely like an already existing law on the subject of laying out highways, where the court decided that it did not apply to existing suits, because the exception must be presumed. In this case, however, the court held that they must look to the effect to be produced by the repeal of the proviso, and in view of the history of the law, that they must hold that it was designed to apply the law to existing

suits. In the words of the court, "But to those who are acquainted with such history [of the two acts] and the circumstances under which these several acts were passed, and who consider these circumstances in connection with the words of the statute, the context, &c., as it is proper that they should do in order to ascertain the intention of the legislature, there can probably be left no room for doubt that the legislature intended that the law of 1857 should apply in all cases."

Let us apply these principles to the construction of the act in question.

It was passed during the continuance of the war for the suppression of the rebellion. The chief attention of Congress, as of the nation, was directed to efforts tending to produce that result. The law, if it was intended to have any force, was for the protection of the loyal citizens of the Northern States, to whom debts were due from citizens of the States in rebellion.

In all, or nearly all of the States which are affected by the statute, the limitation on ordinary contracts, which constitute by far the larger portion of indebtedness, is three years. At the time of the passage of the act, June 11, 1864, all of these contracts must have been barred as well as, without doubt, a large portion of those where the statute allowed six years for the bringing of a suit. Hence, to give the law any really vital and life-giving principle, it must be held to revive and keep in existence the remedy for all those causes of action that existed at the commencement of the rebellion, when, "by reason of the interruption of the ordinary course of judicial proceedings," the defendant "could not be served with process for the commencement of" an action. Loyal citizens were forbidden by public law to hold commercial intercourse with those whom this Court had already declared to be "enemies," and of this fact the legislative power cannot be presumed to have been ignorant. The legislature must have had it in mind in providing the remedy.

The act itself suggests, in plain terms, that this was the intention of the law-making power. It consists of two clauses. The first is, "whenever during the existence of the present re-